

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

SILVESTER REYES-FELICIANO,

Plaintiff/Appellant,

v.

CIV. 10-1261 BB/GBW

UNITED STATES OF AMERICA,

Defendant/Appellee

ORDER GRANTING MOTION TO PROCEED IN FORMA PAUPERIS

THIS MATTER is before the Court on Plaintiff/Appellant's Motion for leave to Proceed on Appeal Without Prepayment of Costs or Fees. *Doc. 22.* The Court, being fully advised, finds that the motion should be granted.

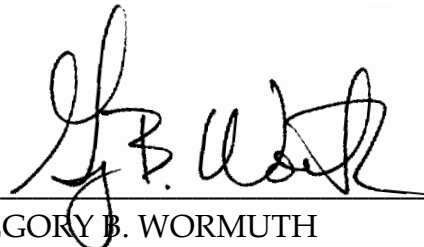
Pursuant to Federal Rule of Appellate Procedure 24, a party must file a motion in the district court in order to proceed *in forma pauperis* on appeal. Fed. R. App. P. 24(a). Said motion must include an affidavit that demonstrates an appellant's inability to pay, "claim[] an entitlement to redress; and . . . state[] the issues that the party intends to present on appeal." *Id.* (a)(1). Ordinarily, a prisoner is not exempted from payment of the full filing fee unless the Court determines that a prisoner "has no assets and no means to pay an initial partial fee" 10th Cir. R. 24.2. The prisoner seeking *in forma pauperis* status must submit "a certified copy of the trust fund account statement (or institutional equivalent) for the prisoner for the 6-month period immediately preceding filing of the . . . notice of appeal" 28 U.S.C. § 1915(a)(2).

As a part of Plaintiff's Motion, Plaintiff includes the requisite forms identifying his

current and past-six-month finances as well as his intended basis for his appeal. *Doc. 22*. The financial forms clearly show that Plaintiff is, at present, incapable of paying the fees associated with his appeal as he has less than one dollar in his account and has consistently had average balances of zero dollars. *Id.* at 4-15. As such, the Court finds that Petitioner should be exempt from payment of a filing fee at this time.

In addition to financial concerns, Plaintiff's appeal also must include a "reasoned, nonfrivolous argument on the law and facts in support of the issues raised on appeal. *Scott v. Province*, 415 Fed App'x 63, 64-65 (10th Cir. 2011). In a previous order, this Court found that Plaintiff did not assert an argument sufficient to warrant issuance of a certificate of appealability. *See doc. 21*. The standards applicable to a certificate of appealability and a grant of *in forma pauperis* status are different. *See United States v. Bradley*, No. 11-8068, 2012 U.S. App. LEXIS 3389, at *6 (10th Cir. Feb. 21, 2012) (granting motion to proceed *in forma pauperis* but denying certificate of appealability). Although the Court believes that Plaintiff's basis for appeal is far-from-strong, it is at the very least not, on its face, so frivolous as to deny Plaintiff's motion to proceed without prepayment of costs.

Wherefore, IT IS HEREBY ORDERED that Plaintiff/Appellant's Motion for Leave to Proceed on Appeal Without Prepayment of Costs or Fees, (*doc. 22*), is GRANTED.

A handwritten signature in black ink, appearing to read 'G.B. Wormuth', is written over a horizontal line.

GREGORY B. WORMUTH
UNITED STATES MAGISTRATE JUDGE